

REMARKS

Reconsideration of the application is requested.

Claims 1-26 and 28-32 remain in the application. Claims 1-26 and 28-32 are subject to examination. Claims 1, 24 and 25 have been amended. Claim 27 has been canceled to facilitate prosecution of the instant application.

In item 2 on page 2 of the above-identified Office Action, the Examiner objected to the drawings for failing to show a roughen surface. Fig. 2A has been amended to show the roughed surfaces 8, 9. Replacement and annotated sheets are enclosed.

In item 3 on page 2 of the Office Action, the Examiner objected to the drawings because the reference numeral 4 is used to designate both the mat 4 and the sponge layer 4. As explained on page 11, lines 8-14, the mat may be a sponge layer and therefore the use of reference numeral 4 is believed to be correct.

Under the heading "Claim Rejections - 35 USC § 102" on pages 3-5 of the above-identified Office Action, claims 1, 2, 7, 8-10, 16, 18, 19, 25, 28, 31 and 32 have been rejected as being

fully anticipated by U.S. Patent No. 3,122,292 to Spier (hereinafter Spier) under 35 U.S.C. § 102.

Spier teaches a bathroom safety liner that is easily cleaned and is attached without the need for straps or suction cups. In addition the safety liner secures around fixtures and is semipermanently bonded to the bathing unit (see column 1, lines 35-38) and is used multiple times before replacement. The safety liner is highly cushioned at all areas in which a user may strike against and therefore its overriding purpose is for safety or slip protection. Within the basin 24 of the tube is a custom built, custom fit protective liner 33 that has a flanged outer edge portion 32 adapted to fit over the top edges 16, 18, 20 and 22 of the tub 12 (see column 2, lines 12-16). The liner 33 is specifically built to the dimensions of the bathing unit or tub 12. The liner 33 is formed of an outer layer 36 and an inner layer being a closed cell foam rubber layer 40 (see column 2, lines 17-21). The flanged portion 32 is adhesively secured to the metal tub portion 34 of the tub 12 by a waterproof permanently soft gum or adhesive coating 42 (see column 2, lines 41-45). However the Spier liner cannot be used for easy travel and disposed of after one use. More specifically, the liner is Spier is geared for at home use as it is custom dimensioned and to expensive to be disposable after one use.

In contrast, the invention of the instant application is disposable after one use and is of a "one size fits all" construction. Claims 1 and 25 of the instant application have been amended with the features of original claim 27 in which the sidewalls are recited to be less than 2 inches high. Claim 27 has been canceled. Because the sidewalls are so short, applicant's liner can fit in any bathing facility and therefore is a one size fits all. In this manner, the invention of the instant application is compact, transportable and can be easily removed and thrown away after use. It is not intended as a semipermanent safety liner.

In addition, claims 1 and 25 have been amended to describe the liner as a disposable liner and support is found page 3, lines 5-9 of the specification of the instant application.

Claim 9 of the instant application recites that the mat is fully enclosed by the water impervious liner. The Examiner states that Spier teaches such a sandwich type format as the mat is enclosed between the liner 36 and the wall of the tub. It is noted that the wall of the tub is not part of the liner 36 and the Examiner's logic cannot be followed. Claim 9 is therefore believed to be allowable over Spier.

Claim 18 of the instant application reads that the sidewalls do not include the mat. In contrast, the mat layer 40 of Spier goes up the sidewalls and only at the very end is it exceeded by the outer liner. However, the sidewalls in Spier are clearly taught to include the mat and therefore does not anticipate claim 18 of the instant application.

In item 7 on pages 5-8 of the above-identified Office Action, claims 3-6, 17, 20, 21, 23, 24, 26, 27, 29 and 30 have been rejected as being obvious over Spier in view of U.S. Patent No. 2,319,603 to Henry (hereinafter Henry) under 35 U.S.C. § 103.

The invention in Henry relates to a protective covering for temporary use in connection with bathtubs. The purpose of the cover is to prevent marring or staining of the finished tub such as frequency occurs during construction through the dropping of plaster, lime, paint, etc. The main covering element 7 is formed of paper and has adhesive strips extending beyond the covering element 7 for attaching to the floor or rim of the tub. The inventive feature of Henry resides in its end covering elements 12 and 13 and how they are formed for wrapping around the side of the bathtub.

First, Henry is not believed to be an analogous art as it relates to the field of construction and protection of facilities under construction. Second, the element 7 in Henry is made of paper which is unsuitable for the purposes of either the instant application or Spier.

In regards to claims 20 and 21 of the instant application, the Examiner states that with reference to Spier, the disclosed thicknesses of 1/32 and 1/64 inches would be obvious to one skilled in the art. It is noted that any proposed modification cannot render the prior art unsatisfactory for its intended purpose (see MPEP 2143.01). Incorporating the thicknesses claimed in claims 20 and 21, into the Spier liner, would destroy the liner from functioning as a safety liner as the recited thicknesses are too thin to provide any real impact cushioning as is the overriding function of the liner in Spier. Therefore the combination would destroy the intended purpose of the Spier liner and the combination is respectfully stated to be unallowable.

In regards to claim 23, the Examiner states that it is well within the general skill of a worker in the art to select a preferred enjoyable scent on the basis of suitability for its intended use as a matter of obvious design choice.

Applicant respectfully disagrees and notes that claim 23 recites that the "liner is coated" with a soap, scent, bubble bath, bath oil, body lotion, moisturizer or color dye. The choice of coating the liner with one of the above items is not believed to be a mere design choice as the manner of delivery is believed to be unique in the field. In addition, providing such items adds to the appeal of the item in commercial sales and also adds an "entertainment factor". In other words, applicant respectfully challenges the Examiner to find a liner ensemble with such a coated feature.

In regards to claim 26 of the instant application, the Examiner states that applicant does not state any advantages regarding a rectangular shape. Applicant respectfully disagrees as the rectangular shape provides a "one size fits all" configuration.

In regards to original claim 27, the Examiner states that making the sidewalls in Spier to be less than 2 inches would have been obvious to one skilled in the art. It is noted that any proposed modification cannot change the principle operation of a reference or make the prior unsatisfactory for its intended purpose (see MPEP 2143.01). If we shorten the sidewalls of the liner taught in Spier it would no longer function as a safety liner which is the overall purpose and

therefore this modification is respectfully stated as not allowable. The shortened sidewalls of the instant application make it possible that it is compact, easily transportable, one size fits all, and is disposable. Neither Spier alone or in combination with Henry teach such a liner. It would not be obvious to have such short sidewall in either Spier or Henry as this would destroy their overall functional purposes.

In regard to claim 23 of the instant application, the Examiner states that it would be a design choice to incorporate such features. Applicant states that incorporating such features provide a commercial advantage by incorporating certain bathing supplements such as soap or entertainment supplements such as bubble baths, scents, etc. It is noted that all features are a matter of design choice but combinations provide convenience and are believed to be patentable if they are novel. For instance, incorporating ink in a pen was a mere design choice but certainly provided a commercial advantage.

It is noted that claim 24 has been amended in line with the amendments for claims 1 and 25.

In item 8 on page 8 of the above-identified Office Action, claims 11-13 and 22 have been rejected as being obvious over Spier in view of U.S. Patent No. 5,465,436 to Bleicher (hereinafter Bleicher) under 35 U.S.C. § 103.

As claims 11-13 and 22 ultimately depend on amended claim 1, claims 11-13 and 22 are also believed to be allowable based on claim 1.

In item 9 on page 9 of the above-identified Office Action, claims 14 and 15 have been rejected as being obvious over Spier in view of U.S. Patent No. 4,047,259 to Lotis (hereinafter Lotis) under 35 U.S.C. § 103.

As claims 14 and 15 ultimately depend on amended claim 1, claims 14 and 15 are also believed to be allowable based on claim 1.

It is further noted that claim 15 of the instant application recites that the dispenser already contains a built-in soap, scent, etc. which is believed to provide an advantage as these items do not have to be individually provided.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either

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show or suggest the features of claim 1, 24, 25. Claims 1, 24, 25 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 1 or 25.

In view of the foregoing, reconsideration and allowance of claims 1-26 and 28-32 are solicited.

If an extension of time is required, petition for extension is herewith made. Any extension fee associated therewith should be charged to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,

For Applicant

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DRAWING AMENDMENTS

The attached sheet of drawings includes changes to Fig. 2A. This sheet which includes Figs. 2A-2C, replaces the original sheet including Figs. 2A-2C. In Fig. 2A, roughened surfaces are better shown.

Please approve the drawing changes that are marked in red on the accompanying "Annotated Sheet Showing Changes" of Fig. 2A. A formal "Replacement Sheet" of amended Fig. 2A is also enclosed.

Attachments: Replacement Sheet

Annotated Sheet Showing Changes



2/5

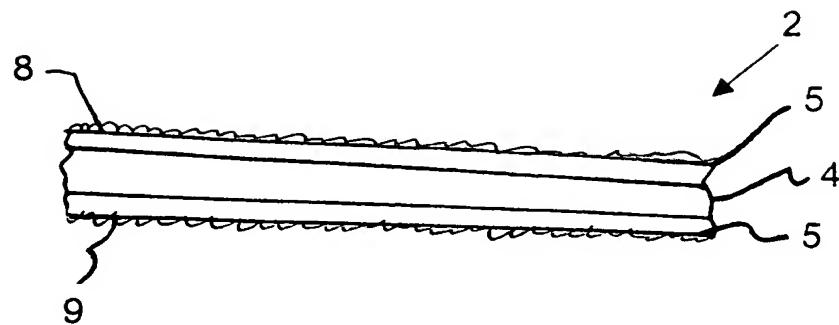


FIG. 2A



FIG. 2B



FIG. 2C